

AMENDED IN ASSEMBLY FEBRUARY 24, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1742

Introduced by Assembly Member Coto

February 8, 2010

An act to add Section 1021.11 to the Code of Civil Procedure, relating to attorneys' fees. An act to amend Section 56345 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1742, as amended, Coto. ~~Attorneys' fees: civil actions. Education: special education.~~

Existing law requires individualized education programs for pupils with exceptional needs in grades 7 to 12, inclusive, to include any and all alternative means and modes necessary for the pupil to complete the prescribed course of study of the district and to meet or exceed proficiency standards for graduation.

This bill would make a clarifying change to that provision to allow pupils to use technology-based materials.

~~Existing law provides that attorneys' fees allowed by contract, statute, or law are costs, and the prevailing party in any action or proceeding is entitled to a recovery of costs as a matter of right. Existing law also provides that, except as attorneys' fees are specifically provided for by statute, the measure and mode of compensation of attorneys is controlled by the agreement of the parties.~~

~~This bill would authorize a court, upon motion, to award attorneys' fees to a successful plaintiff in an action for damages arising out of the fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property by the defendant.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 56345 of the Education Code is amended*
2 *to read:*

3 56345. (a) The individualized education program is a written
4 statement for each individual with exceptional needs that is
5 developed, reviewed, and revised in accordance with this section,
6 as required by Section 1414(d) of Title 20 of the United States
7 Code, and that includes the following:

8 (1) A statement of the individual's present levels of academic
9 achievement and functional performance, including the following:

10 (A) The manner in which the disability of the individual affects
11 his or her involvement and progress in the general education
12 curriculum.

13 (B) For preschool children, as appropriate, the manner in which
14 the disability affects his or her participation in appropriate
15 activities.

16 (C) For individuals with exceptional needs who take alternate
17 assessments aligned to alternate achievement standards, a
18 description of benchmarks or short-term objectives.

19 (2) A statement of measurable annual goals, including academic
20 and functional goals, designed to do the following:

21 (A) Meet the needs of the individual that result from the
22 disability of the individual to enable the pupil to be involved in
23 and make progress in the general education curriculum.

24 (B) Meet each of the other educational needs of the pupil that
25 result from the disability of the individual.

26 (3) A description of the manner in which the progress of the
27 pupil toward meeting the annual goals described in paragraph (2)
28 will be measured and when periodic reports on the progress the
29 pupil is making toward meeting the annual goals, such as through
30 the use of quarterly or other periodic reports, concurrent with the
31 issuance of report cards, will be provided.

32 (4) A statement of the special education and related services
33 and supplementary aids and services, based on peer-reviewed
34 research to the extent practicable, to be provided to the pupil, or
35 on behalf of the pupil, and a statement of the program modifications

1 or supports for school personnel that will be provided to enable
2 the pupil to do the following:

3 (A) To advance appropriately toward attaining the annual goals.

4 (B) To be involved in and make progress in the general
5 education curriculum in accordance with paragraph (1) and to
6 participate in extracurricular and other nonacademic activities.

7 (C) To be educated and participate with other individuals with
8 exceptional needs and nondisabled pupils in the activities described
9 in this subdivision.

10 (5) An explanation of the extent, if any, to which the pupil will
11 not participate with nondisabled pupils in the regular class and in
12 the activities described in subparagraph (C) of paragraph (4).

13 (6) (A) A statement of individual appropriate accommodations
14 that are necessary to measure the academic achievement and
15 functional performance of the pupil on state and districtwide
16 assessments consistent with Section 1412(a)(16)(A) of Title 20 of
17 the United States Code.

18 (B) If the individualized education program team determines
19 that the pupil shall take an alternate assessment instead of a
20 particular state or districtwide assessment of pupil achievement,
21 a statement of the following:

22 (i) The reason why the pupil cannot participate in the regular
23 assessment.

24 (ii) The reason why the particular alternate assessment selected
25 is appropriate for the pupil.

26 (7) The projected date for the beginning of the services and
27 modifications described in paragraph (4), and the anticipated
28 frequency, location, and duration of those services and
29 modifications.

30 (8) Beginning not later than the first individualized education
31 program to be in effect when the pupil is 16 years of age, or
32 younger if determined appropriate by the individualized education
33 program team, and updated annually thereafter, the following shall
34 be included:

35 (A) Appropriate measurable postsecondary goals based upon
36 age-appropriate transition assessments related to training,
37 education, employment, and where appropriate, independent living
38 skills.

1 (B) The transition services, as defined in Section 56345.1,
2 including courses of study, needed to assist the pupil in reaching
3 those goals.

4 (b) If appropriate, the individualized education program shall
5 also include, but not be limited to, all of the following:

6 (1) For pupils in grades 7 to 12, inclusive, any alternative means
7 and modes necessary for the pupil to complete the prescribed
8 course of study of the district and to meet or exceed proficiency
9 standards for graduation, *including allowing pupils to use*
10 *technology-based materials as defined in subdivision (m) of Section*
11 *60010.*

12 (2) For individuals whose native language is other than English,
13 linguistically appropriate goals, objectives, programs, and services.

14 (3) Pursuant to Section 300.106 of Title 34 of the Code of
15 Federal Regulations, extended school year services shall be
16 included in the individualized education program and provided to
17 the pupil if the individualized education program team of the pupil
18 determines, on an individual basis, that the services are necessary
19 for the provision of a free appropriate public education to the pupil.

20 (4) Provision for the transition into the regular class program if
21 the pupil is to be transferred from a special class or nonpublic,
22 nonsectarian school into a regular class in a public school for any
23 part of the schoolday, including the following:

24 (A) A description of activities provided to integrate the pupil
25 into the regular education program. The description shall indicate
26 the nature of each activity, and the time spent on the activity each
27 day or week.

28 (B) A description of the activities provided to support the
29 transition of pupils from the special education program into the
30 regular education program.

31 (5) For pupils with low-incidence disabilities, specialized
32 services, materials, and equipment, consistent with guidelines
33 established pursuant to Section 56136.

34 (c) It is the intent of the Legislature in requiring individualized
35 education programs, that the local educational agency is responsible
36 for providing the services delineated in the individualized education
37 program. However, the Legislature recognizes that some pupils
38 ~~may~~ *shall* not meet or exceed the growth projected in the annual
39 goals and objectives of the individualized education program of
40 the pupil.

(d) Consistent with Section 56000.5 and Section 1414(d)(3)(B)(iv) of Title 20 of the United States Code, it is the intent of the Legislature that, in making a determination of the services that constitute an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team shall specifically discuss the communication needs of the pupil, consistent with “Deaf Students Education Services Policy Guidance” (57 Fed. Reg. 49274 (October 1992)), including all of the following:

(1) The pupil’s primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities, which may be met by consolidating services into a local plan areawide program or providing placement pursuant to Section 56361.

(3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil’s primary language mode and language consistent with existing law regarding teacher training requirements.

(4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal Vocational Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(5) In accordance with Section 300.113 of Title 34 of the Code of Federal Regulations, each public agency shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(6) Subject to paragraph (7), each public agency, pursuant to Section 300.113(b) of Title 34 of the Code of Federal Regulations, shall ensure that external components of surgically implanted medical devices are functioning properly.

(7) For a child with a surgically implanted medical device who is receiving special education and a service under Section 56363, a public agency is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been

1 surgically implanted, or of an external component of the surgically
2 implanted medical device.

3 (e) State moneys appropriated to districts or local educational
4 agencies ~~may~~ *shall* not be used for any additional responsibilities
5 and services associated with paragraphs (1) and (2) of subdivision
6 (d), including the training of special education teachers and other
7 specialists, even if those additional responsibilities or services are
8 required pursuant to a judicial or state agency determination. Those
9 responsibilities and services shall only be funded by a local
10 educational agency as follows:

11 (1) The costs of those activities shall be funded from existing
12 programs and funding sources.

13 (2) Those activities shall be supported by the resources otherwise
14 made available to those programs.

15 (3) Those activities shall be consistent with Sections 56240 to
16 56243, inclusive.

17 (f) It is the intent of the Legislature that the communication
18 skills of teachers who work with hard-of-hearing and deaf children
19 be improved. This section does not remove the discretionary
20 authority of the local educational agency in regard to in-service
21 activities.

22 (g) Beginning not later than one year before the pupil reaches
23 ~~the age of~~ 18 years *of age*, a statement that the pupil has been
24 informed of the pupil's rights under this part, if any, that will
25 transfer to the pupil upon reaching ~~the age of~~ 18 years *of age*
26 pursuant to Section 56041.5.

27 (h) The individualized education program team is not required
28 to include information under one component of a pupil's
29 individualized education program that is already contained under
30 another component of the individualized education program.

31 (i) This section does not require that additional information,
32 beyond that explicitly required by Section 1414 of Title 20 of the
33 United States Code and this part, be included in the individualized
34 education program of a pupil.

35 ~~SECTION 1. Section 1021.11 is added to the Code of Civil~~
36 ~~Procedure, to read:~~

37 ~~1021.11. Upon motion, a court may award attorneys' fees to~~
38 ~~a successful plaintiff in an action for damages arising out of the~~

- 1 fraud, ~~theft, embezzlement, fraudulent conversion, or~~
- 2 misappropriation of property by the defendant.

O